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**IN THE
COURT OF APPEALS OF INDIANA**

ERRON GOSS,¹

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0612-CR-1142

APPEAL FROM THE MARION COUNTY SUPERIOR COURT

The Honorable Mark Stoner, Judge

Cause No. 49F09-0510-FD-179509

July 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

¹ The appellant's last name is spelled "Gross" and "Groce" at various points in the record. The appellant spells his last name as "Goss." Appellant's App. at 23.

Case Summary

Erron Goss appeals his convictions for class D felony criminal recklessness and class A misdemeanor carrying a handgun without a license. We affirm.

Issues

We restate the issues as follows:

- I. Whether the State presented sufficient evidence to convict Goss of class D felony criminal recklessness; and
- II. Whether the State presented sufficient evidence to convict Goss of class A misdemeanor carrying a handgun without a license.

Facts and Procedural History

The facts most favorable to the jury's verdict indicate that on October 16, 2005, at 3:30 a.m., Indianapolis Police Officer Darrell Miller was sitting in his patrol car in a parking lot on the corner of West 38th Street and Capitol Avenue in Indianapolis, Indiana. Officer Miller saw a car turn westbound onto 38th Street from an alley. Office Miller noticed that the car's headlights were not on. Office Miller was going to pull in behind the car to make a traffic stop for the unlit headlights. As the car turned onto 38th Street, Officer Miller observed a hand and an arm extend from the passenger's side front window holding a black semiautomatic handgun. Officer Miller then saw two muzzle flashes from the handgun and heard two shots. Some vehicle traffic was in the area, and some pedestrians were across the street at a gas station.

Officer Miller reported that shots had been fired and followed the vehicle onto Boulevard Place, where he activated his patrol car's emergency lights and spotlight. Officer

Miller never lost sight of the vehicle, and he never observed anything being thrown from the vehicle, which stopped at 37th Street and Boulevard Place.

When other police officers arrived, they removed a man named Bishop from the driver's seat and Goss from the front passenger seat. Officer Miller asked both men where the handgun was located, and they both responded that it was in the vehicle. Officer Miller searched the vehicle several times, but he failed to find a handgun in the vehicle or on the men. The area where the gunshots were fired was also searched, but no handgun was found there, either. Officer Miller recovered two spent 9 mm shell casings at the place he observed the gunshots.

The State charged Goss with class D felony criminal recklessness and class A misdemeanor carrying a handgun without a license. On October 4, 2006, a jury found Goss guilty as charged. Goss now appeals his convictions.

Discussion and Decision

Standard of Review

Goss contends that the State failed to present sufficient evidence to support his convictions. When reviewing sufficiency of the evidence claims, “a reviewing court does not reweigh the evidence or judge the credibility of the witnesses, and respects the jury’s exclusive province to weigh conflicting evidence.” *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). The jury’s verdict will not be disturbed if the jury could reasonably infer from the circumstantial evidence presented that the defendant is guilty beyond a reasonable doubt. *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995). “On appeal, the circumstantial evidence

need not overcome every reasonable hypothesis of innocence.” *Id.* “Where the evidence of guilt is essentially circumstantial, the question for the reviewing court is whether reasonable minds could reach the inference drawn by the jury; if so, there is sufficient evidence.” *Bruce v. State*, 286 Ind. 180, 253, 375 N.E.2d 1042, 1080 (1978).

I. Criminal Recklessness

Class D felony criminal recklessness is committed when a person recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another person while armed with a deadly weapon. Ind. Code § 35-42-2-2. The State alleged that Goss committed class D felony criminal recklessness by firing a handgun from the window of a motor vehicle in an area where residents, businesses, and passersby were present. Goss contends that the State’s evidence was insufficient to show that he fired the handgun and that the firing created a substantial risk of bodily injury to another person.

The record indicates that Officer Miller observed a hand holding a semiautomatic handgun emerge from the passenger’s side window and fire two shots. Once Officer Miller stopped the vehicle, Goss was in the front passenger seat and was the only passenger in the vehicle. Based on the evidence, a reasonable trier of fact could infer that it was Goss who stuck his arm out the window and fired the shots. The shots were fired in a residential/business neighborhood, and there were pedestrians and motorists in the area who could have been injured. Under such circumstances, a reasonable trier of fact could infer that Goss’s firing of the handgun created a substantial risk of bodily injury. Therefore, the circumstantial evidence is sufficient to affirm Goss’s conviction for class D felony criminal recklessness.

II. Carrying a Handgun Without a License

Indiana Code Section 35-47-2-1 provides in pertinent part that “a person shall not carry a handgun in any vehicle or on or about the person’s body, except in the person’s dwelling, on the person’s property or fixed place of business, without a license issued under this chapter being in the person’s possession.” Indiana Code Section 35-47-2-24 states that the defendant has the burden to prove that he has a valid license. “Once the State proves that the defendant carried a handgun on or about his person, away from his dwelling or business, the burden shifts to the defendant to establish that he possessed a valid license.” *Harris v. State*, 716 N.E.2d 406, 411 (Ind. 1999).

We have already determined that the State presented sufficient evidence that Goss possessed a handgun away from his dwelling, property, or fixed place of business. The burden shifted to Goss to prove that he possessed a valid license. Goss failed to meet this burden. Therefore, we affirm Goss’s conviction for class A misdemeanor carrying a handgun without a license.

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.